

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Canadian Newstar Manufacture Co., Ltd.,

Court File No. 0:24-CV-04030 (JMB / SGE)

Plaintiff,

v.

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT AND
COUNTERCLAIM**

Delavan AG Pumps, Inc.,

Defendant.

Defendant Delavan AG Pumps, Inc. ("Defendant" or "Delavan"), hereby answers the Complaint of Plaintiff Canadian Newstar Manufacture Co., Ltd. ("Plaintiff" or "Canadian Newstar"), as follows:

To the extent not expressly admitted, each and every allegation in the Complaint is denied.

I. PARTIES

1. Plaintiff Canadian Newstar Manufacture Co., Ltd. is a corporation organized under the laws of Canada with its principal place of business located in Canada.

RESPONSE: Delavan is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies the same. Delevan further states that publicly available information indicates that Canadian Newstar Manufacture Co., Ltd. has been dissolved since 2005.

2. Defendant Delavan AG Pumps, Inc. is a corporation organized under the laws of Minnesota with its principal place of business located at 1226 Linden Avenue, Suite 123, Minneapolis, MN 55403-1230.

RESPONSE: Admit.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between a citizen of a foreign state and a citizen of a state.

RESPONSE: Paragraph 3 contains legal conclusions that need not be admitted or denied.

To the extent an answer is required, Delavan denies the allegations in Paragraph 3.

4. This Court has personal jurisdiction over the Defendant because Defendant is incorporated in and has its principal place of business in Minnesota.

RESPONSE: Paragraph 4 contains legal conclusions that need not be admitted or denied.

To the extent an answer is required, Delavan states that it does not contest that the Court has personal jurisdiction in this action.

5. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because the Defendant principal place of business is in this district.

RESPONSE: Delavan admits that venue is proper in this District.

III. FACTUAL BACKGROUND

6. On various dates in 2022, Newstar supplied and delivered goods to Delavan AG as per their business agreement.

RESPONSE: Denied.

7. Newstar issued the following invoices to Delavan AG for the goods supplied:

- Invoice NSM2022-090: \$130,465.37 dated June 6, 2022
- Invoice NSM2022-101: \$165,825.44 dated July 5, 2022
- Invoice NSM2022-155: \$864.00 dated November 11, 2022
- Invoice NSM2022-159: \$194,926.73 dated December 5, 2022

Total amount invoiced: \$492,081.54

The invoices are attached as Group Exhibit A.

RESPONSE: Denied.

8. Delavan AG acknowledged the debt and proposed a payment plan on February 1, 2023, agreeing to pay the outstanding invoices by April 14, 2023.

RESPONSE: Denied.

9. To date, Delavan AG has only paid \$180,465.37, leaving an outstanding balance of \$311,616.17.

RESPONSE: Denied.

10. Despite repeated requests for payment, Delavan AG has failed and refused to pay the remaining balance due to Newstar.

RESPONSE: Denied.

COUNT I: BREACH OF CONTRACT

11. Newstar incorporates by reference the allegations contained in paragraphs 1 through 10 as if fully set forth herein.

RESPONSE: Delavan incorporates its prior answers.

12. A valid and enforceable contract existed between Newstar and Delavan AG, wherein Newstar agreed to supply goods, and Delavan AG agreed to pay for those goods.

RESPONSE: Denied.

13. Newstar performed all of its obligations under the contract by supplying the goods to Delavan AG.

RESPONSE: Denied.

14. Delavan AG breached the contract by failing to pay the full amount due under the invoices.

RESPONSE: Denied.

15. As a direct and proximate result of Delavan AG's breach, Newstar has suffered damages in the amount of \$311,616.17, plus interest and costs.

RESPONSE: Denied.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction to hear and decide this matter.
2. Canadian Newstar lacks standing to pursue the claims asserted in its Complaint.
3. Canadian Newstar has failed to state a claim upon which relief may be granted.
4. Canadian Newstar has failed to name a necessary and indispensable party.
5. Canadian Newstar's claim is barred, in whole or in part, by the doctrine of accord and satisfaction.

6. Canadian Newstar's claim is barred, in whole or in part, because Canadian Newstar, or its related entities, received payment from Delavan.
7. Canadian Newstar has waived its claim.
8. Canadian Newstar's claim is barred by the doctrine of laches.
9. Equitable considerations, including the doctrines of unclean hands, estoppel and justifiable reliance bar Canadian Newstar's claim.
10. Canadian Newstar failed to mitigate its alleged damages.
11. Delavan reserves the right to assert additional affirmative defenses.

COUNTERCLAIM

1. Delavan AG Pumps, Inc. ("Delavan") is a corporation organized and existing under the laws of the state of Minnesota.
2. Delavan designs, manufactures, and sells industrial and agricultural pumps.
3. Delavan orders goods from a factory located in Longkou, China that manufactures, among other things, hydraulic cylinders that are used by one of Delavan's customers (the "Newstar Factory").
4. Delavan previously made payments to Shandong Newstar Aero Hydraulics Machinery Co., Ltd. ("Shandong Newstar") for shipments that it received from the Newstar Factory.
5. On information and belief, Shandong Newstar is a company operating in China and is located at #9 Guangzhou Road, Economic and Technological Development Zone, Yantai, Shandong, China, and is owned and operated by Michael Yang.
6. Delavan received purchase orders and invoices from Shandong Newstar and made payment through wire instructions provided by Shandong Newstar to a bank account located in China.
7. Delavan has never received purchase orders or invoices from Canadian Newstar.

8. Delavan does not know what affiliation, if any, Canadian Newstar has with Shandong Newstar or the Newstar Factory.

9. On information and belief, Canadian Newstar is not a currently registered and active company operating in Canada as publicly available records indicate that Canadian Newstar registered on December 19, 2001, but dissolved on October 11, 2005 for failure to file.

10. Since approximately May 2023, Delavan has ordered, had delivered, and made payment for hydraulic cylinders manufactured at the Newstar Factory from a company operating in China called Yantai Newstar Hydrotec Co., Ltd. (“Yantai Newstar”).

11. On information and belief, Yantai Newstar is located at Qianluan Industrial Park, Lutou Town, Longkou City, Shandong Province, China.

12. Delavan’s last payment to Yantai Newstar took place on November 15, 2024.

13. On information and belief, Yantai Newstar and Shandong Newstar are currently involved in a dispute in China regarding the Newstar Factory which includes payments made by Delavan. That dispute alleges that one of Yantai Newstar’s owners, Michael Yang, embezzled and wrongfully transferred funds from the Newstar Factory, including funds paid by Delavan to Shandong Newstar, and forced the dissolution of the Yantai Newstar entity that previously owned and operated the Newstar Factory.

14. Delavan has attempted in good faith to determine the proper party to make payment to for any outstanding amounts owed but multiple, competing parties for payment exist including Canadian Newstar, Shandong Newstar, Yantai Newstar, and potentially other entities.

COUNT I – INTERPLEADER

15. Delavan incorporates by reference and realleges the above allegations as if fully set forth herein.

16. There are competing claims for payment of the invoices that form the basis for the claim asserted in Plaintiff's Complaint for breach of contract including by Canadian Newstar, Shandong Newstar, Yantai Newstar, and potentially other entities.

17. The competing claims put Delavan at risk of incurring double or multiple liabilities.

18. Delavan has no means, other than this interpleader action, of protecting itself from double or multiple liabilities and is unable, without hazarding itself to multiple claims, to determine a proper allocation or apportionment of payment among the parties with competing claims to said interest.

19. Delavan therefore requests that the Court order Canadian Newstar, Shandong Newstar, and Yantai Newstar to interplead their respective claims, the Court decide whether Canadian Newstar, Shandong Newstar, or Yantai Newstar is entitled to the sum of money, and the Court discharge Delavan from all liability except as to the person it will decide to be entitled to the sum of money.

PRAYER FOR RELIEF

WHEREFORE, Defendant Delavan AG Pumps, Inc. requests judgment as follows:

- A. The dismissal of the Complaint on the merits and with prejudice;
- B. The Court order the relief requested in Defendant Delavan's Counterclaim;
- C. The Court award Delavan its attorneys' fees and costs; and
- D. For such other and further relief as the Court deems just and equitable.

Dated: November 25, 2024

s/ Jeffrey W. Post

Jeffrey W. Post (#0271883)

Ryan C. Young (#0397751)

FREDRIKSON & BYRON, P.A.

60 South Sixth Street

Suite 1500

Minneapolis, MN 55402-4400

Telephone: (612) 492-7000

jpost@fredlaw.com

ryoung@fredlaw.com

***Attorneys for Defendant Delavan AG Pumps,
Inc.***